

Law No: 64/2020/QH14

PPA's  
Unofficial  
translation

**LAW ON PUBLIC PRIVATE PARTNERSHIP INVESTMENT**

*Pursuant to the Constitution of the Socialist Republic of Vietnam;*

*The National Assembly promulgates the Law on Public Private Partnership Investment.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Governing scope**

This Law governs investment activities in public private partnership modality; state administration, rights, obligations and responsibilities of the agencies, organizations and individuals involved in public private partnership investment activities.

**Article 2. Applicable entities**

This Law applies to the parties to public private partnership contracts, the state administration agencies, as well as agencies, organizations and individuals involved in public private partnership investment activities.

**Article 3. Interpretation of terms**

In this Law, the following terms are construed as follows:

1. *Pre-feasibility study* is the document presenting the contents of preliminary study on the necessity, feasibility and effectiveness of public private partnership project (hereinafter referred to as PPP project), based on which the competent authority approves in principle the investment.

2. *Feasibility study* is the document presenting contents of study on the necessity, feasibility and effectiveness of PPP project, based on which the competent authority approves the project.

3. *Bid security* is the deposit, collateral or letter of guarantee issued by legally operated credit institution, branch of foreign bank, insurance company in Viet Nam that is lodged by an investor before deadline for bid submission in order to ensure the investor's bidding responsibility.

4. *Contract performance guarantee* is the deposit, collateral or letter of guarantee issued by legally operated credit institution, branch of foreign bank, insurance company in Viet Nam that is lodged by project enterprise to ensure the responsibility of the investor and project enterprise to perform the contract.

5. *Lender* is the organization, individual providing loans to investor, PPP project enterprise to implement a PPP project contract.

6. *Procuring entity* is the unit that has expertise and capability and is assigned by the competent agency to organize the investor selection.

7. *Short list* is the list of qualified investors in case of open bidding with pre-qualification or the list of investors who are invited for competitive negotiation.

8. *PPP project company* is the enterprise established by investor for the only purpose of signing and implementing the PPP project contract.

9. *PPP project* is the synthesis of proposals relating to an investment in order to provide public goods, services based on one or several activities, as follows:

a) Constructing, operating, conducting business activities of the facility, infrastructure system;

b) Renovating, upgrading, expanding, modernizing, operating, conducting business activities of existing facility, infrastructure system;

c) Operating, conducting business activities of existing facility, infrastructure system.

10. *Public private partnership investment modality (hereinafter referred to as PPP)* is the investment mode conducted on basis of time-limited partnership between the State and private investor by signing and implementing PPP project contract, in order to engage the private investor in PPP project.

11. *PPP project preparation unit* is the unit assigned by the competent agency to prepare pre-feasibility study, feasibility study and undertake other relevant tasks.

12. *Application for pre-qualification* is the full set of documents prepared and submitted by investor to the procuring entity as requested in pre-qualification documents.

13. *Bid* is the full set of documents prepared and submitted by investor to the procuring entity as requested in the bidding document.

14. *Pre-qualification document* is the full set of documents specifying requirements about qualifications and experiences of investors, that serves as the basis for the procuring entity to select a short list.

15. *Bidding document* is the full set of documents used to select investor including

requirements for project implementation, that serves as the basis for investors to prepare bids; for the procuring entity to evaluate bids and negotiate contract in order to select investor who qualifies the project performance requirements.

16. *PPP project contract* is the written agreement between contract signing agency and investor, PPP project enterprise on the State's concession to the investor, PPP project enterprise to implement a PPP project in accordance with provisions herein, in the following contract types:

- a) Build – Operation – Transfer contract (hereinafter referred to as BOT contract);
- b) Build – Transfer – Operate contract (hereinafter referred to as BTO contract);
- c) Build – Own – Operate Contract (hereinafter referred to as BOO contract);
- d) Operate – Management contract (hereinafter referred to as O&M contract);
- dd) Build – Transfer – Lease contract (hereinafter referred to as BTL contract);
- e) Build – Lease – Transfer contract (hereinafter referred to as BLT contract);
- g) Mixed contract as stipulated in clause 3 Article 45 of this Law.

17. *Investor selection* is the process of identifying investor who have sufficient capabilities, experiences, and feasible solutions to implement PPP projects on the principle of ensuring competition, fairness, transparency, and economic efficiency.

18. *PPP investor (hereinafter referred to as investor)* is the independent legal entity established in accordance with applicable laws or the joint-venture of a number of legal entities to participate in PPP investment.

19. *State capital* includes state budget capital, lawful revenues for investment expenditure, recurrent expenditures within the state budget's spending task.

#### **Article 4. Investment sectors, scale and classification of PPP projects**

1. PPP investment sectors include:

- a) Transport;
- b) Power grids, power plants, except for hydroelectric power plants and cases of State monopoly as per stipulated in the Law on Electricity;
- c) Irrigation; water supply; drainage and wastewater treatment; waste treatment;
- d) Healthcare; education - training;
- dd) Information technology infrastructure;

2. The minimum total investment of a PPP project is stipulated as below:

- a) Not less than VND 200 billion for project in the sectors specified in points a, b, c and dd clause 1 of this Article; not less than VND 100 billion for such project located in geographical areas with difficult socio-economic conditions, extremely difficult socio-economic conditions according to law and regulations on investment;

b) Not less than VND 100 billion for project in the sectors specified in point d clause 1 of this Article;

c) Regulations on the minimum total investment at point a and b this Clause shall not apply to project under the O&M contract.

3. PPP projects are classified by in-principle investment approval competence, including:

a) Project under in-principle investment approval competence of National Assembly;

b) Project under in-principle investment approval competence of Prime Minister;

c) Project under in-principle investment approval competence of Minister, Head of central-level agency, other agency stipulated in point c clause 1 Article 5 of this Law;

d) Project under in-principle investment approval competence of Provincial-level People's Council.

4. The Government shall provide guidance on the investment sectors in clause 1 and the minimum total investment for each sector in clause 2 of this Article.

#### **Article 5. The competent agency and the PPP contract signing agency**

1. The competent agencies include:

a) Ministries, ministerial-level agencies, agencies under Government, central-level agencies of political organization, Supreme People's Procuracy, Supreme People's Court, State Audit, Office of the President, Office of the National Assembly, the central-level agencies of Vietnamese Fatherland Front and socio-political organizations (hereinafter referred to as Ministries, central-level agencies);

b) Provincial-level People's Committees;

c) Agencies, organizations established by the Government, the Prime Minister and assigned budget estimates according to law and regulations on state budget (hereinafter referred to as other agencies).

2. The PPP contract signing agencies include:

a) The competent agencies defined in clause 1 of this Article;

b) The agencies and units authorized by competent agencies to sign contracts according to the provisions of clause 4 of this Article.

3. In case project is under administration of a number of competent agencies as stipulated in clause 1 of this Article or in case of changing the competent agencies, these agencies shall report to Prime Minister to decide one competent agency.

4. The competent agency could authorize its directly subordinate agency or unit to act as the PPP contract signing agency under its competence.

#### **Article 6. PPP project appraisal council**

1. PPP project appraisal councils include:

a) State appraisal council shall appraise pre-feasibility study and feasibility study of PPP project of which the National Assembly approves the investment in principle;

b) Inter-disciplinary appraisal council shall appraise pre-feasibility study and feasibility study of PPP project of which the Prime Minister approves the investment in principle;

c) Institutional-level appraisal council shall appraise pre-feasibility study and feasibility study of PPP project of which the Minister, Head of central-level agency, other agency or Provincial-level People's Council approve the investment in principle, except for case that the appraisal task is assigned to competent agency's directly subordinate unit as stipulated in clause 3 of this Article.

2. The Prime Minister shall decide on the establishment of PPP project appraisal councils as regulated in point a and point b clause 1 of this Article at the request of the Minister of Planning and Investment.

3. Based on the scale and nature of project, the Minister, Head of central-level agency and other agency, Chairman of Provincial-level People's Committees shall establish the institutional-level appraisal council or assign a directly subordinate unit to perform the task of appraising pre-feasibility study and feasibility study of PPP project.

4. The PPP project appraisal councils, directly subordinate units tasked to perform the appraisal are allowed to hire consultant to assist.

5. The Government shall provide guidance on this Article.

#### **Article 7. Principles for administering PPP investment**

1. Conforming to national socio-economic development strategies, plans and relevant master-plans in accordance with law and regulations on master-planning.

2. Ensuring effective management and use of State resources in PPP projects.

3. The performance of examination, inspection, state audit, supervision to PPP project shall not obstruct the normal investment and business activities of investor, PPP project company.

4. Ensuring the publicity, transparency, equality, sustainability and efficiency of the investment.

5. Ensuring the harmony of interests among the State, investors, users and the community.

#### **Article 8. Contents of state administration on PPP investment**

1. Promulgating, propagating, disseminating and organizing the implementation of legal documents on PPP investment.

2. Summarizing, evaluating, reporting on the implementation of PPP investment activities.

3. Examining, inspecting, supervising the implementation of the law and regulations on PPP investment.

4. Resolving petitions, denunciations and handling violations relating to PPP investment activities; settling complaints in investor selections.

5. Organizing and conducting investment promotion, international cooperation on PPP investment.

6. Providing guidance, support and resolution of procedural issues at the request of investor, PPP project enterprise during the performance of PPP investment activities.

### **Article 9. Publicity and transparency in PPP investment**

1. The information that shall be published in the National Procurement Network System includes:

a) Information of in-principle investment approval, approval of PPP project;

b) Information on investor selection, including: invitation for pre-qualification, bid invitation, short list, result of investor selection;

c) Information on the selected investor, PPP project company;

d) Main contents of PPP project contracts, including: the total investment; structure of capital sources in the project; type of contract; duration of project implementation; tariff, fee of public goods, services; forms and locations to collect tariff, fee (if any) and other necessary information;

dd) The settlement value of public investment capital in PPP project in the case of using public investment capital;

e) Law and regulations on PPP investment;

g) Database about the investors;

h) Information on resolving petitions, denunciations, complaints, handling violations of law and regulations on PPP investment;

2. In addition to the publication on the national procurement network system, the information stipulated in points a, b, c and d clause 1 of this Article shall be published on the website (if any) of the competent agency.

3. Other information stipulated in clause 1 of this Article is encouraged to be published in other mass media.

### **Article 10. Prohibited acts in PPP investment**

1. Approving in principle the investment of PPP project, which is inconsistent with strategies, master-plans and plans; with unidentifiable sources of state capital in PPP project requiring the use of state capital; beyond the competence, processes, procedures according to stipulations of this Law.

2. Approving PPP project, which is prior to the in-principle investment approval; inconsistent with the in-principle investment approval; beyond the competence, processes, procedures according to stipulations of this Law.

3. The competent agency, the contract signing agency collude with consultants and investors leading to in-principle investment approval, approval of PPP project that cause losses of State's capital, assets, nation's resources; damages or infringements to the benefits of citizens and communities.

4. Not ensuring the fairness, transparency in investor selection, including the following acts:

a) Participating in a selection procedure as an investor in the project for which it is procuring entity, competent agency, contract signing agency or implementing the duties of procuring entity, competent agency and contract signing agency;

b) Participating in preparation and concurrently appraising the pre-qualification document, bidding document, participating in evaluation of bids and concurrently appraising result of investor selection for the same project;

c) Being an individual member of procuring entity, competent agency, contract signing agency, that is directly involved in the process of investor selection or participates in the expert group, the appraisal team of investor selection result or is the head of competent agency, contract signing agency, procuring entity for project that his/her natural father, natural mother, father-in-law, mother-in-law, spouse, natural offspring, adoptee, daughter-in-law, son-in-law, natural sibling are named as the investor participating in the selection procedure or as legal representative of the investor participating in the selection procedure;

d) Bidding for the project of which the competent agency, the contract signing agency or the procuring entity is the agency, organization where he/she used to work for within 12 months from his/her resignation from that agency, organization.

5. Divulging or receiving following information or documents on investor selection process, as follows:

a) Contents of pre-qualification document, bidding document before the stipulated time of issuance, except for case where the project must conduct market survey, prior consultation with the investor to prepare pre-qualification document, bidding document;

b) Contents of application for pre-qualification, bid/proposal, report of procuring entity, report of the expert team, appraisal report, report of the consulting firm, report of

professional agency involving in the process of investor selection, result of pre-qualification, result of investor selection before being publicized according to regulations.

c) Other document in the process of investor selection, that is determined to contain state secrets as prescribed by law.

6. Collusion, including the following acts:

a) Agreeing to withdraw from bidding or to withdraw the submitted bids so that one or more parties involving in the agreement to win the bidding;

b) Agreeing to let one party or more parties prepare bids for bidders so that to one party or more parties involving in the agreement win the bidding.

7. Assigning shares, capital contribution, rights and obligations without compliance with the provisions of this Law and the PPP project contract.

8. Failing to continue the supply of the public goods, services, except for the case stipulated in the PPP project contract.

9. Offering, receiving and brokering bribe in PPP investment activities.

10. Abusing positions and powers to appropriate, make profit, corrupt in managing and using the state capital in PPP projects; illegally intervening in the PPP project process.

11. Fraud in PPP investment activities, including following acts:

a) Producing fake and incorrect information, documents and records related to the in-principle investment approval, approval for PPP projects, investor selection, PPP project implementation to gain illicit profits or to avoid any obligations;

b) Deliberately reporting or providing inaccurate and unobjective information to falsify the in-principle investment approval, the approved PPP project, investor selection results, inspection, supervision, examination and audit results, the result of public investment capital settlement, liquidation of PPP project contract;

c) Deliberately providing untruthful and unobjective information that falsifies data on the PPP project's revenue in order to gain illicit profits.

12. Obstructing the detection and handling of violations of the PPP investment regulations.

### **Article 11. PPP project procedure**

1. Except for the case stipulated in clause 2 of this Article, the PPP project procedure is prescribed as follows:

a) Formulation, appraisal of pre-feasibility study, in-principle investment approval, publication of the project;



- b) Formulation, appraisal of feasibility study, approval of the PPP project;
- c) Selection of investor;
- d) Establishment of PPP project company and signing of PPP project contract;
- dd) Implementation of PPP project contract.

2. For PPP projects applying high technology on the list of high technology prioritized for development investment as regulated by the law and regulations on high technology, applying new technology as regulated by the law and regulations on technology transfer, PPP project procedure is stipulated as follows:

- a) Formulation, appraisal of the pre-feasibility study, in-principle investment approval, publication of the project;
- b) Investor selection;
- c) The selected investor prepares the feasibility study;
- d) Appraisal the feasibility study, approval of the project;
- dd) Implementation of other steps as stipulated in points d and dd clause 1 of this Article.

3. In case the PPP project has a construction work that requires contest for architectural plan, the organization of the contest is considered and approved in the in-principle investment approval stipulated in clause 1 or clause 2 of this Article. The organization of contest for architectural plan shall comply with law and regulations on architecture.

4. Project under public investment plan, which is considered for conversion to PPP project, shall comply with the procedure specified in clause 1 or clause 2 of this Article.

- 5. The Government shall provide the details of PPP project procedure.

## **Chapter II**

### **PREPARATION OF PPP PROJECT**

#### **Section 1**

##### **PPP PROJECT FORMULATED BY COMPETENT AGENCY**

#### **Article 12. Competence to approve in principle the investment of PPP project**

1. The National Assembly shall approve in principle the investment of PPP project satisfying one of the following criteria:

- a) Using public investment capital worth VND 10,000 billion or above;

b) Affecting considerably the environment or having implicit, serious effects to the environment, including: nuclear power plants; used land requiring the change of land use purpose of special-use forest land, watershed protection forest land, border protection forest land of 50 hectares or more; land of wind-shielding, sand-shielding, wave-shielding protection forest, protection forest as water-breaker and sea encroachment of 500 hectares or more; land of production forest of 1,000 hectares or more;

c) Using land requiring the change of land use purpose of 500 hectares or more which is being used to cultivate rice with two or more crops;

d) Requiring migration and residential re-settlement of 20,000 inhabitants or more in mountainous areas, or 50,000 inhabitants or more in other areas;

dd) Requiring the application of special mechanism and policies which need to be adopted by the National Assembly.

2. Except for the projects stipulated in clause 1 of this Article, the Prime Minister shall approve in principle the investment of PPP project satisfying one of the following criteria:

a) Requiring migration and residential re-settlement of 10,000 inhabitants or more in mountainous areas or 20,000 inhabitants or more in other areas;

b) Using the central-level budget capital managed by ministry or central-level agency, with total investment equivalent to group A project stipulated in the law and regulations on public investment, project using ODA loan and concessional loan of foreign donor;

c) Investment in new construction of: airfield, airport; runway of airfield, airport, passenger terminal of international airport; cargo terminal of airfields, airports with an annual capacity of 1 million tons or more;

d) Investment in new construction of: harbor, port areas under special seaport; harbors, port areas under type I seaport with a total investment equivalent to Group A project stipulated in the law and regulations on public investment.

3. Minister, the Head of central-level agency, other agency shall approve in principle the investment of PPP project under their respective scope of administration, except for projects stipulated in clause 1 and clause 2 of this Article.

4. The Provincial-level People's Council shall approve in principle the investment of PPP project under their respective scope of administration, except for projects stipulated in clause 1 and clause 2 of this Article.

5. In case of adjustment to in-principle investment approval of PPP project, the competence to such adjustment shall comply with clause 2 Article 18 of this Law.

### **Article 13. Procedure for in-principle investment approval of PPP project**

1. Procedure for in-principle investment approval of PPP project under competence of National Assembly is stipulated as follows:

a) The PPP project preparation unit shall prepare a pre-feasibility study as the basis for competent agency to submit to the Government and concurrently to Ministry of Planning and Investment;

b) Minister of Planning and Investment shall propose the Prime Minister to establish a state appraisal council;

c) The State appraisal council shall appraise the pre-feasibility study. In case the project uses public investment capital, the appraisal of capital source and capital allocative possibility shall comply with laws and regulations on public investment;

d) The Government shall finalize the dossier for submission to the National Assembly for consideration and approval;

dd) Agency of the National Assembly shall review the dossier submitted by the Government;

e) The National Assembly shall consider, adopt a resolution approving in principle the investment of the project.

2. Procedure for in-principle investment approval of PPP project under competence of the Prime Minister is stipulated as follows:

a) The PPP project preparation unit shall prepare a pre-feasibility study as the basis for the competent agency to submit to Ministry of Planning and Investment;

b) The Minister of Planning and Investment shall propose the Prime Minister to establish an inter-disciplinary appraisal council;

c) The inter-disciplinary appraisal council shall appraise the pre-feasibility study;

d) The Ministry of Planning and Investment shall preside over the appraisal of capital source and capital allocative possibility of the central budget capital in accordance with laws and regulations on public investment in case the PPP project uses central budget capital and then send the result to inter-disciplinary appraisal council;

dd) The agency specialized in management of public investment at provincial level shall preside over the appraisal of capital source and capital allocative possibility of the local budget capital in accordance with laws and regulations on public investment in case the PPP project uses local budget capital, then send the result to inter-disciplinary appraisal council;

e) The inter-disciplinary appraisal council shall complete and send the appraisal report to the competent agency;

g) The competent agency shall finalize and submit the dossier to the Prime Minister for consideration and approval;

h) The Prime Minister shall approve in principle the investment of the project.

3. Procedure for in-principle investment approval of PPP project under competence of Minister, Head of central-level agency, other agency is stipulated as follows:

a) The PPP project preparation unit shall prepare a pre-feasibility study as the basis for submission to Minister, Head of central-level agency, other agency for consideration and approval;

b) The institutional-level appraisal council or the assigned unit shall appraise the pre-feasibility study;

c) The agency specialized in management of public investment at Ministry, central-level agency, other agency shall preside over the appraisal of capital source and capital allocative possibility of public investment capital in accordance with law and regulations on public investment in case the PPP project uses public investment capital, then send the results to institutional-level appraisal council or the appraising unit;

d) The institutional-level appraisal council or the appraising unit shall complete and send the appraisal report to the PPP project preparation unit;

dd) The PPP project preparation unit shall finalize the dossier and submit to Minister, Head of central-level agency, other agency for consideration and approval;

e) Minister, Head of central-level agency, other agency shall approve in principle the investment of the project.

4. Procedure for in-principle investment approval of PPP project under competence of Provincial People's Council is stipulated as follows:

a) The PPP project preparation unit shall prepare a pre-feasibility study and submit to the Provincial People's Committee;

b) The institutional-level appraisal council or the assigned unit shall appraise the pre-feasibility study;

c) The agency specialized in management of public investment at local level shall preside over the appraisal of capital source and capital allocative possibility of local budget capital in accordance with law and regulations on public investment in case the PPP project uses local budget capital, send the results to institutional-level appraisal council or the appraising unit;

d) The institutional-level appraisal council or the assigned unit shall complete and send the appraisal report to PPP project preparation unit;

dd) The PPP project preparation unit shall finalize the dossier, as the basis for the Provincial-level People's Committee to submit to the Provincial-level People's Council for consideration and approval;

e) The Provincial-level People's Council shall approve in principle the investment of the project.

5. For the PPP projects using recurrent capital source, lawful revenue sparing for recurrent expenditure of state agency, publicly established non-for-profit unit as payment to PPP project company, using state budget reserve to pay for revenue shortfall, the financial agency of appropriate level shall appraise the capital allocative possibility of budget as prescribed in law and regulations on state budget, send to the appropriate PPP project appraisal council or the unit tasked with appraisal for synthesising and submission to competent authority to approve in principle the investment.

#### **Article 14. PPP project selection and formulation of pre-feasibility study**

1. Conditions for selecting a project to invest according to PPP modality include:

a) Necessity for investment;

b) The investment sector of the project is among the sectors stipulated in clause 1 Article 4 of this Law and the project total investment meets the minimum scale requirements specified in clause 2 Article 4 of this Law;

c) The project shall not overlap with PPP projects that had in-principle investment approvals or project approvals;

d) The proposed investment modality has advantages over other forms of investment;

dd) There presents capital allocative possibility in the case that needs state capital usage.

2. Basis for formulation of pre-feasibility study includes:

a) Strategies and plans for socio-economic development of the country and relevant master-plans in accordance with law and regulations on master-planning;

b) Provisions of this Law and provisions of other laws and regulations relating to the project's investment sector;

c) Other relevant legal documents.

3. The pre-feasibility study shall contain the following basic contents:

a) Necessity for investment; PPP investment advantages compared to other forms of investment; impacts of project implementation under PPP modality to the community and residents in the project area;

b) Objectives; expected scale, location, project duration; demand for use of land and other resources;

c) Preliminary design in accordance with the law and regulations on construction for project with construction components, or other relevant laws for projects without construction components; preliminary explanation on technical and technological plans; preliminary division into component projects (if any);

d) Preliminary assessment of socio-economic effectiveness of the project; preliminary assessment of the environmental impacts as required by the law and regulations on environmental protection for public investment project;

dd) Preliminary total investment; preliminary assessment of financial model of the project; preliminary schedule of state capital usage in project (if any); preliminary payment mechanism for investors under projects applied BTL, BLT contract type;

e) Preliminary proposal PPP project contract type; forms of investment incentive and guarantee; mechanism of sharing revenue shortfall.

#### **Article 15. Appraisal of pre-feasibility study of PPP project**

1. The dossier for the appraisal of pre-feasibility study shall comprise of:

- a) A written request for appraisal;
- b) Draft submission document requesting in-principle investment approval;
- c) Pre-feasibility study;
- d) Other relevant legal documents of the project.

2. The appraisal of the pre-feasibility study shall include the following basic contents:

a) Conformity with conditions for selecting PPP project stipulated in clause 1, Article 14 of this Law;

b) Conformity with the basis for preparing a pre-feasibility study stipulated in clause 2, Article 14 of this Law;

c) Investment effectiveness; ability to recover the investor's capital;

d) Appropriateness of PPP project contract type;

dd) Revenue shortfall sharing mechanism;

e) Capital source and capital allocative possibility of PPP project using state capital.

#### **Article 16. Dossier requesting in-principle investment approval of PPP project**

1. Submission document requesting in-principle approval of the investment.

2. Draft document of in-principle investment approval.
3. Pre-feasibility study.
4. Appraisal report on pre-feasibility study; verification report on pre-feasibility study of project that the National Assembly shall approve in principle the investment.
5. Other relevant legal documents of the project.

#### **Article 17. Contents of in-principle investment approval of PPP project**

1. The in-principle investment approval shall include the following basic contents:
  - a) Name of the project;
  - b) Name of the competent agency;
  - c) Objectives; preliminary scale, location, project implementation duration, demand for use of land and other resources;
  - d) Preliminary choice of PPP contract type;
  - dd) Preliminary total investment capital; preliminary financial plan; structure of capital sources in the project; preliminary schedule of tariff or fee of public goods, services for project applying the mechanism that tariff and fee be collected directly from users;
  - e) Mechanism for investment guarantee, mechanism for sharing revenue shortfall;
2. For project applying high technology, new technology in addition to provisions under clause 1 of this Article, content of in-principle investment approval shall include the name of procuring entity, procedure for investor selection, time for investor selection.

#### **Article 18. Adjustment to in-principle investment approval of PPP project**

1. In-principle investment approval of PPP project shall be adjusted when there presents change of objectives, location, scale, contract type of PPP project, increase in total investment capital of 10% and above or increase in state capital in PPP project in the following cases:
  - a) Project is affected by force majeure event;
  - b) Change in master-plans, policies, relevant laws and regulations;
  - c) Adjustment of feasibility study;
2. The competent authority for in-principle investment approval of PPP project shall be the competent authority for adjusting in-principle investment approval and be responsible for such decision on adjustment.
3. Procedure for submission to the competent authority for adjustment of in-principle investment approval of PPP project shall be in accordance with the Article 13 of this Law for to-be-adjusted contents.

4. Dossier for adjustment to in-principle investment approval shall include:

- a) Submission document requesting adjustment to in-principle investment approval;
- b) To-be-adjusted contents of the pre-feasibility study;
- c) Appraisal report, verification report on to-be-adjusted contents of pre-feasibility study;
- d) Other relevant legal documents of the project.

**Article 19. Contents of feasibility study of PPP project**

1. The PPP project preparation unit shall prepare feasibility study based on the in-principle investment approval.

2. The feasibility study shall include the following basic contents:

a) Necessity for investment; advantage of applying PPP investment modality for the project over other investment forms; results of apprehending opinions on the project investment's impacts when there are the opinions of the Provincial-level People's Council, the Provincial-level People's Committee, the Provincial-level of Vietnam Fatherland Front in the project area; professional association related to the sector of investment;

b) Conformity of the project to national socio-economic development strategies, plans and relevant master-plans in accordance with law and regulations on master-planning;

c) Investment objectives; scale; location; demand for use of land and other resources;

d) Progression; project time-line that includes: contract duration, time for construction of works for project with construction components;

dd) Explanation on requirements pertaining to technical and technological plans, quality standards of the facility, infrastructure system or public goods and services; design dossier in accordance with the law and regulations on construction, other relevant law and regulations; the relationship among component projects (if any);

e) Type of PPP project contract; risk analysis and measures to manage risks of the project;

g) Forms of investment incentive and guarantee, mechanism of sharing revenue shortfall;

h) Total investment amount; financial plan of the project; estimated state capital in the project and corresponding method of management and usage (if any); results of surveys for the interest of investors and lenders (if any); ability to raise capital to



implement projects; plan on managing the project, doing business or providing public goods and services;

i) Socio – economic effectiveness of the project; environmental impact assessment report in accordance with the law on environmental protection.

#### **Article 20. Dossier, contents for appraisal of feasibility study of PPP project**

1. Dossier for feasibility study appraisal shall comprise of:

- a) A written request for the appraisal;
- b) Draft submission document requesting approval of the project;
- c) Feasibility study;
- d) In-principle investment approval;
- dd) Other relevant legal documents of the project.

2. The appraisal of feasibility study shall include the following basic contents:

- a) Conformity with the legal basis;
- b) The necessity for investment;
- c) Conformity with requirements pertaining to technical and technological plans, quality standards of facility, infrastructure system or public goods and services. The appraisal of contents regarding design dossier, technical, technological and quality standards shall comply with law and regulations on construction and other relevant law and regulations;
- d) The appropriateness of PPP project contract type;
- dd) The financial feasibility of the project; management and business plan or plan for providing public goods and services;
- e) Socio-economic effectiveness of the project.

#### **Article 21. Competence to approve PPP project**

1. The Prime Minister shall approve the project stipulated in clause 1 Article 12 of this Law.

2. Minister, Head of central-level agency and other agency shall approve project within their administration scope as stipulated in clause 2 and 3 Article 12 of this Law.

3. Chairman of the Provincial People’s Committee shall approve project within the administration scope as prescribed in clause 2 and 4 Article 12 of this Law.

#### **Article 22. Dossier requesting the approval of PPP project**

- 1. Submission document requesting approval of the project.
- 2. Draft document of project approval.

3. Feasibility study.
4. Appraisal report on the feasibility study.
5. In-principle investment approval.
6. Other relevant legal documents of the project.

### **Article 23. Contents of PPP project approval**

The approval of PPP project shall include the following basic contents:

1. Name of the project;
2. Name of the contract signing agency;
3. Objectives; scale; location; project implementation duration; demand for use of land and other resources;
4. Type of PPP project contract.
5. Total investment capital; structure of capital sources; schedule of tariff or fee of public goods, services for projects applying the mechanism that tariff and fee be collected directly from users;
6. Name of procuring entities, procedure for investor selection, time for investor selection, except for the case as stipulated in clause 2 Article 17 of this Law.

### **Article 24. Adjustment of PPP project**

1. Feasibility study shall be adjusted in the following cases:
  - a) The project is affected by force majeure event;
  - b) There emerge factors that bring about higher socio-economic, financial efficiency for the project;
  - c) Change in master-plans, policies, relevant laws and regulations that cause direct impacts on the objectives, location, scale of the project;
  - d) Failure to select investor to implement the project.
2. In case that adjustment to the feasibility study leads to change of objectives, scale, location, contract type of PPP project, increase in total investment of 10% and above or increase in state capital in PPP project, it is required to implement the adjustment of in-principle investment approval in right process and procedure before submission to competent authority for project adjustment approval.
3. The competence, the procedure of appraisal and approval for adjustment of PPP project shall comply with Articles 19, 20, 21, 22 and 23 of this Law for to-be-adjusted contents.
4. Dossier for adjustment to PPP project shall include:

- a) Submission document requesting approval on project adjustment;
- b) Draft document of approval on project adjustment;
- c) Appraisal report on to-be-adjusted contents of feasibility study;
- d) Other relevant legal documents of the project.

#### **Article 25. Publication of PPP project information**

1. Within 10 days after the issuance of in-principle approval of investment, approval of in-principle investment approval adjustment (if any), approval of project, approval project adjustment (if any), the competent agency shall publish project information specified in clause 2 of this Article.

2. Project information to-be-published shall include:

- a) In-principle approval of investment, approval of in-principle investment approval adjustment (if any);
- b) Approval of project, approval project adjustment (if any);
- c) Information on contact of the competent agency, the contract signing agency, the procuring entity.

### **Section 2**

#### **PPP PROJECT PROPOSED BY INVESTOR**

##### **Article 26. Conditions for PPP project proposed by investor**

1. The PPP project proposed by investor must meet the following conditions:

- a) In conformity with conditions for selecting PPP project stipulated in points a, b, c and d Clause 1 Article 14 of this Law;
- b) The proposed project shall not overlap with PPP project of which the pre-feasibility study are being formulated by the competent agency or assigned to another investor to prepare;
- c) In compliance with national socio-economic development strategies, plans and relevant master-plans according to law and provisions on master-planning.

2. Projects proposed by the investor shall be procured under open bidding or competitive negotiation in accordance with Article 37 or Article 38 of this Law.

##### **Article 27. Procedure to prepare PPP project proposed by investor**

1. The procedure to prepare PPP project proposal dossier shall be as follows:

- a) Investor shall submit a written request for implementing a PPP project to the competent agency; in case of unidentifiable competent agency, investor shall send it to the state administration agency on PPP investment;

b) The competent agency shall consider and reply in written of either acceptance or not acceptance to the investor's request for pre-feasibility study preparation. The content of the acceptance document shall include coordination mechanism with organizations and units of the competent agency, requirements on the deadline for investor's submission of project proposal dossier and other related contents; in case of disapproval, the reason must be clearly stated;

c) In case that the competent agency accept, the investor shall prepare dossier of project proposal including: pre-feasibility study, dossier of eligibilities, capabilities and experiences of the investor;

d) Investor submit the dossier of to the competent agency;

dd) In case of the dossier of project proposal is not approved, the investor must bear all costs and risks.

2. Project proposed by investor shall be appraised and approved in principle the investment according to the provisions of Articles 6, 12, 13, 14, 15, 16 and 17 of this Law.

3. The procedure for preparation, appraisal of PPP feasibility study and approval of PPP project shall be implemented as follows:

a) Investor prepares the feasibility study as stipulated in Article 19 of this Law;

b) The feasibility study formulated by the investor shall be appraised in accordance with the procedure stipulated in Article 20 of this Law;

c) The project is approved in accordance with Articles 21, 22 and 23 of this Law;

d) In case that the project is not approved, the investor must bear all costs and risks.

4. Procedure of project publication shall be implemented as follows:

a) After the project proposed by the investor is granted in-principle approval of the investment, approval of the project by the competent authority, the competent agency shall organize publication of information of the project in accordance with Article 25 of this Law and name of the project proponent;

b) For project with contents relating to intellectual property rights, trade or technology secrets, or confidential agreements on capital mobilization for project implementation, the investor and the competent agency may agree on those project contents that shall not be disclosed.

5. The adjustment of in-principle investment approval of PPP project shall comply with Article 18 of this Law; the adjustment of PPP project shall comply with Article 24 of this Law.

6. The cost of preparing pre-feasibility study and feasibility study shall be counted into the total investment of the project. In case the investor who proposed the project is not selected, the cost of preparing the pre-feasibility study, feasibility study shall be refunded by the selected investor.

7. The Government shall provide guidance on this Article.

### **Chapter III**

## **SELECTION OF INVESTORS**

### **Section 1**

#### **GENERAL PROVISIONS ON INVESTOR SELECTION**

##### **Article 28. Process of investor selection**

1. The investor selection shall be implemented according to the following process:

a) Selection of short list (if applicable);

b) Preparation of investor selection;

c) Organization of investor selection;

d) Evaluation of bids;

dd) Submission, appraisal, approval and publication of the investor selection result;

e) Negotiation, finalization, signing PPP project contract and publication of the contract information.

2. Based on the specific conditions of each project, the competent agency shall select a short list after in-principle approval of the investment as specified in point a clause 1 Article 11 of this Law or after approval of the project as specified in point b, clause 1, Article 11 of this Law.

3. The conduct of investor selection process stipulated in clause 1 of this Article on the national procurement network system shall comply with the road-map regulated by the Minister of Planning and Investment.

4. Investors with approved project proposals shall be offered incentives when evaluating bids.

5. Investors who commit to use domestic contractors, goods, supplies, materials and equipment are entitled to preferential treatment when evaluating bids.

6. The Government shall provide guidance on this Article.

##### **Article 29. Eligibility of investor**

An investor shall be eligible if it fully meets the following conditions:

1. Having valid establishment, business registration certificate issued by a competent authority in the respective jurisdiction where the investor operates;
2. Having financially autonomous status; ensuring competition in investor selection;
3. Neither being in the process of dissolution; nor being subject to any insolvency as regulated by law on bankruptcy;
4. Not being debarred from PPP investment activities;
5. An enterprise with charter capital funded 100% by the State shall formulate a joint-venture with private sector investor to participate in investor selection process;
6. Investor established under foreign laws and regulations must meet market accessibility conditions when participating in investor selection procedure for project that falls within conditional market accessibility sectors and trades as stipulated by law and regulations on investment.

### **Article 30. Ensuring fair competition in investor selection**

An investor participating in competitive investor selection procedure shall be legally and financially autonomous from the following parties:

1. Consultant in charge of pre-feasibility study, feasibility study formulation, except for the project proposed by investor.
2. Consultant in charge of pre-feasibility study, feasibility study appraisal.
3. Consultant in charge of formulation, appraisal of pre-qualification document, bidding document; evaluation, appraisal result of pre-qualification, result of investor selection.
4. Competent agency, contract signing agency, procuring entity.

### **Article 31. Domestic, international investor selection**

1. The domestic investor selection shall be implemented with procedures stipulated in Articles 37, 38, 39 and 40 of this Law, in which only investors established according to Vietnamese laws and regulations are allowed to participate.

2. The international investor selection shall be implemented with procedures stipulated in Articles 37, 38, 39 and 40 of this Law, in which investors established according to foreign laws and regulations and investors established according to Vietnamese laws and regulations are allowed to participate.

3. The international investor selection shall be applied for all PPP projects, except the following cases:

- a) Project falling within sectors or trades that have not been opened for market accessibility by the foreign investors in accordance with law and regulations on

investment;

b) Project that must ensure the requirements on national defense, security, state secret protection.

### **Article 32. Language used in investor selection**

The language to be used in the investor selection is Vietnamese for domestic investor selection; is English or Vietnamese and English for international investor selection.

### **Article 33. Bid security**

1. Based on the scale and nature of each project, the value of bid security shall be stipulated in bidding document at a specified amount of between 0,5% and 1,5% of the total investment of the project.

2. The validity of bid security shall be stipulated in the bidding document and is equal to the validity of bid plus 30 days.

3. In case of extension the validity of bids or proposals, the procuring entity shall request investors to extend correspondingly the validity of their bid securities, provided that no change is made to contents of submitted bids. In case the investor refuses to extend, its bid shall be deemed as invalid and disqualified.

4. In the case that a joint-venture participates in bidding, each member of the joint-venture may either individually provide its bid security or agree that one member is responsible to provide bid security for that member and for other members of the joint-venture. The total amount of bid security(ies) shall not be smaller than the required amount in the bidding document. In the event that a member of the joint-venture breaches the provisions of clause 6 of this Article, the bid security of all members of the joint-venture shall not be refunded.

5. The procuring entity shall return or release bidding security to the investor who is not selected within the time limit specified in the bidding document but no more than 14 days from the date of approval to investor selection result. For the selected investor, the bid security is returned or released after the PPP project enterprise established by selected investor provides a contract performance guarantee as stipulated in Article 48 of this Law.

In case the investor refuses to extend as specified in Clause 3 of this Article, the procuring entity shall return or release the bid security to the investor within 14 days from the date that procuring entity receives the written refusal to extend.

6. Bid security shall not be refunded in the following cases:

a) The investor withdraws its bid within the validity of bid;

b) The investor violates the regulations on procurement, which results in the cancellation of selection process according to the provisions of point dd, clause 1, Article 35 of this Law;

c) The investor fails to proceed with or refuse to enter into contract negotiation, finalization within 30 days from the date of receiving the award notification from procuring entity or refuse to sign contract after contract negotiation, finalization, except for force majeure circumstances;

d) The PPP project enterprise established by selected investor fails to provide contract performance guarantee as prescribed in Article 48 of this Law.

#### **Article 34. Cancellation of selection process**

1. Cancellation of selection process shall be implemented in the following cases:

a) All applications for pre-qualification, bids or proposals fail to meet the requirements stated in pre-qualification document, bidding document;

b) Change in the objective, scale stated in pre-qualification document, bidding document;

c) Nonconformity with this Law and other relevant laws and regulations in pre-qualification document, bidding document, resulting in failure of the selected investor in satisfying project implementation requirements;

d) Noncompliance with this Law and other relevant laws and regulations in the organization of investor selection, resulting in restriction of competition among investors;

dd) Presence of any evidence of giving, receiving or brokering of bribery, collusion, fraud, abuse of position or power to illegally intervene in investor selection process, leading to distorted result of investor selection.

2. Organizations or individuals having violation activities that lead to cancellation of investor selection process as stipulated in points c, d and dd clause 1 of this Article shall compensate the relevant parties for the costs incurred and be sanctioned in accordance with relevant laws and regulations.

#### **Article 35. Responsibilities of the procuring entity in the process of investor selection**

1. Be responsible before laws and regulations and competent agencies for the process of investor selection.

2. Ensure honesty, objectivity and fairness.

3. Compensate the damages according to applicable laws and regulations.

4. Ensure the relevant documents be kept confidentially.



5. Archive relevant information in accordance with law and regulations on archiving.

**Article 36. Handling complicated circumstance in investor selection throughout project implementation**

1. Handling complicated circumstance in investor selection throughout project implementation means solving problems that arise and are not concretely, clearly regulated in this Law.

2. Competent agency, procuring entity shall be responsible before laws and regulations for decisions on handling complicated circumstances on the basis of ensuring the following principles:

a) Ensuring competition, fairness, transparency and economic efficiency;

b) Based on in-principle approval of investment; approval of project; pre-qualification document, bidding document; applications for pre-qualification, bid; result of pre-qualification, result of investor selection; contract signed with the selected investor; actual implementation of the project.

3. The Government shall provide guidance on this Article.

**Section 2**

**INVESTOR SELECTION PROCEDURES**

**Article 37. Open bidding**

1. Open bidding means a procedure of investor selection which does not limit the number of investors.

2. Open bidding must be applied to all PPP projects, except for the cases specified in Articles 38, 39 and 40 of this Law.

**Article 38. Competitive negotiation**

Competitive negotiation shall be applied in the following cases:

1. There are no more than 3 investors who meet the requirements of the project implementation are invited to participate;

2. High technology application project on the list of high technologies prioritized for development investment according to law and regulations on high technology;

3. New technology application project according to law and regulations on technology transfer.

**Article 39. Direct appointment**

1. Direct appointment shall be applied in the following cases:

a) Project that must ensure the requirements on national defense, security, state secret protection;

b) Project that must immediately select alternate investor as specified in point a clause 4 Article 52 of this Law to ensure continuity in the project implementation.

2. The competent authority who approved the project shall decide the direct appointment of investor; for project applying direct appointment stipulated in point a clause 1 of this Article, there must be prior approval of the Prime Minister which shall be based on the position of Ministry of National Defense, Ministry of Public Security for the requirements regarding national defense, security, state secret protection.

#### **Article 40. Investor selection in special case**

1. In case the PPP project of exceptional, exclusive conditions that cannot apply any procedure prescribed in Articles 37, 38 and 39 of this Law, the competent agency shall propose to the Prime Minister for consideration and decision on a plan of investor selection.

2. Dossier to be submitted to the Prime Minister shall include the following contents:

a) Basic information of the project;

b) Explanation on the exceptional, exclusive conditions of project;

c) Plan for investor selection in special case, including: process of implementing investor selection; specific solution to address the exceptionality, exclusiveness of the proposed project to ensure the investment efficiency of the project.

### **Section 3**

#### **METHODS AND CRITERIA FOR EVALUATING THE APPLICATIONS FOR PRE-QUALIFICATION AND BIDS**

#### **Article 41. Methods and criteria for evaluating the applications for pre-qualification**

1. The evaluation of the pre-qualification applications shall be based on the method of scoring on the scale of 100 or 1.000 regulated in the pre-qualification document. The scoring method is built on the criteria for evaluation of pre-qualification application stipulated in clause 2 of this Article.

2. Criteria for evaluation of pre-qualification application include the following basic contents:

a) Financial-commercial capabilities and experiences, capital arrangement capabilities; experiences of similar project implementation.

In case of joint-venture, capabilities, experiences of the investor shall be determined by the total capabilities and experiences of the joint-venture members; leading member of joint-venture must have minimum equity contribution of 30%, each of other members of joint-venture must have minimum equity contribution of 15%;

b) Preliminary project implementation plan and commitment to implement the project;

c) The history of disputes and lawsuits against past and on-going contracts.

#### **Article 42. Methods and criteria for evaluation of bids**

1. The evaluation of capabilities and experiences shall be based on the scale of 100 or 1.000 stipulated in the bidding document. Criteria for evaluation of capabilities and experiences shall be in accordance with clause 2 Article 41 of this Law.

2. The technical evaluation shall be based on the scale of 100 or 1.000 or the pass/fail method stipulated in the bidding document. Criteria for technical evaluation include: standards for quality, capacity and efficiency; standards for operating, managing, conducting business, maintaining; standards for environmental protection and safety; other technical standards.

3. Financial and commercial evaluation shall be based on the comparison and ranking method stipulated in the bidding document. The comparison and ranking method shall be built on financial-commercial evaluation criteria, including one of the following criteria:

a) Criteria for tariff, fee of public goods and services;

b) Criteria for state capital supporting the construction of facility, infrastructure system;

c) Criteria for social benefit and state benefit.

4. The Government shall provide guidance on this Article.

#### **Article 43. Considerations for investor selection result**

Investor shall be proposed to award the contract upon satisfaction of the following conditions:

1. Having valid bid or proposal.

2. Meeting the requirements of capabilities and experiences.

3. Meeting the technical requirements.

4. Meeting financial - trade requirements.

5. Having the bid ranked first.

### **Chapter IV**

**ESTABLISHMENT, OPERATION OF PPP PROJECT ENTERPRISE;  
PPP PROJECT CONTRACT**

**Article 44. Establishment and operation of PPP project enterprise**

1. Upon approval of result of investor selection, investors shall establish PPP project enterprise under the model of limited company or non-public joint stock company, with a single purpose to sign and implement PPP project contract. The application for enterprise registration shall comply with the law and regulations on enterprises and the approval of investor selection result.

2. PPP project enterprise shall be allowed to issue corporate bonds as regulated in Article 78 of this Law.

3. In addition to regulations in clause 1 and clause 2 of this Article, the establishment, management structure, operation, dissolution, bankruptcy of PPP project enterprise shall comply with law and regulations on enterprises, other related laws and regulations and PPP project contract.

**Article 45. Classification of PPP project contracts**

1. The group of project contracts which applied mechanism of collecting fee directly from users or off-taking the public goods, services include:

a) BOT contract means a contract that the investor, the PPP project enterprise shall be concessioned to build, conduct business, operate facility, infrastructure system for a fixed term; upon expiry of such term, the investor, the PPP project enterprise shall transfer the facility, infrastructure system to the State.

b) BTO contract means a contract that the investor, the PPP project enterprise shall be concessioned to build the facility, infrastructure system; upon completion, the investor, the PPP project enterprise shall transfer the facility, infrastructure system to the State and be entitled to conduct business and operate such the facility, infrastructure system for a fixed term;

c) BOO contract means a contract to which the investor, the PPP project enterprise shall be concessioned to build, own, conduct business, operate the facility, infrastructure system for a fixed term; upon expiry of such term, the PPP investor, the PPP project enterprise shall terminate the contract;

d) O&M contract means a contract that the investor, the PPP project enterprise shall be concessioned to conduct business, manage the existing facility, infrastructure system, in whole or in part, for a fixed term; upon expiry of such term, the investor, the PPP project enterprise shall terminate the contract.

2. The group of project contracts which apply the State payment mechanism based on the quality of public goods, services include:

a) BTL contract means a contract that the investor, the PPP project enterprise shall be concessioned to build facility, infrastructure system and transfer to the State upon completion; be entitled to provide public goods, services on the basis of operation and utilization of such facility, infrastructure system for a fixed term; the contract signing agency shall lease the services and make payments to the investor, the PPP project enterprise.

b) BLT contract means a contract that the investor, the PPP project enterprise shall be concessioned to build facility, infrastructure system and provide public goods, services on the basis of operation and utilization of such facility, infrastructure system for a fixed term; the contract signing agency shall lease the services and make payments to the investor, the PPP project enterprise; upon expiry of such term, the investor, the PPP project enterprise shall transfer the facility, infrastructure system to the State.

3. A mixed contract is the project contract combining several types of contract described in clause 1 and clause 2 of this Article.

4. Regarding project set out in point b clause 9 Article 3 of this Law, the contract type shall not apply the mechanism of collecting fee directly from users.

#### **Article 46. PPP project contract dossier**

1. PPP project contract dossier shall consist of the following basic documents:

a) PPP project contract including general conditions and specific conditions;

b) Contract annex (if any);

c) Minutes of contract negotiation;

d) Approval of investor selection result;

dd) Bids and documents providing clarification to bids submitted by the selected investors;

e) Bidding documents and documents revising, supplementing the bidding documents.

2. Upon changes in contents of the contract, the parties shall sign annex to the contract.

#### **Article 47. Basic contents of PPP project contracts**

1. PPP project contract shall include the following basic contents:

a) Objectives, scale, location and implementation progress of the project; construction duration of the facility, infrastructure system; validity date of the contract; contract duration;

b) Scope and technical, technological requirements, requirements on quality of the facility, infrastructure system, public goods and services to be provided;

c) Total investment capital; capital structure; financial model including financial arrangement plans; tariff, fee of public goods and services including method and formula to establish and adjust the tariff, fee schedule; state capital in PPP project and corresponding method of management and usage (if any);

d) Conditions for the use of land and other resources; plan on organization of construction of auxiliary works; requirements on compensation, support and resettlement; insurance of safety and environmental protection; force majeure cases and handling options in case of force majeure;

dd) Responsibilities in performing licensing procedures in accordance with relevant laws; designing; organization of construction; inspection, supervision, quality management in the construction phase; acceptance, finalization of investment capital and certification of completion of facility, infrastructure system; supplying key input materials for production and business activities of the project;

e) Responsibilities in operation and conduction of business activities of facility, infrastructure system for public goods and services to be provided continuously and stably; conditions, procedures, process transfer of facility, infrastructure system;

g) Performance security; assurance of property rights, management rights, utilization rights of the assets relating to the project; rights and obligations of the investors, the PPP project company; agreement on using the third party's guarantee service with respect to obligations of the contract signing agencies;

h) Solutions in case the circumstances for contract performance change substantially as stipulated in civil law to continue the contract implementation; remedies and compensation measures in case one of the parties violates the contract;

i) Responsibilities of parties related to information security; report mechanism; supply relevant information and documents and explain the contract implementation according to the request of competent agencies, inspection, examination, audit and supervision agencies;

k) Principles and conditions for modifying, supplementing and terminating contracts ahead of time; assignment of rights and obligations of the parties; rights of lenders; procedures, rights and obligations of the parties when liquidating the contract;

l) Investment incentives, the option to share the revenue surplus and shortfall, ensure the balance of foreign currency, types of insurance (if any);

m) The contract governing law and dispute resolution mechanism.

2. PPP project contract shall specify rights and obligations of contract signing agency, the investor and the PPP project company.

3. The Government shall regulate standard contracts for the types of contracts stipulated in Article 45 of this Law.

#### **Article 48. Performance guarantee of PPP project contract**

1. The PPP project enterprise shall take measures to ensure contract performance before the validity date of the contract.

2. Based on the scale and nature of project, the value of contract performance guarantee is specified in the bidding document at a specified amount of between 1% and 3% of the total investment of the project.

3. The valid time of contract performance guarantee shall be from the validity date of the contract until the date when the PPP project enterprise fulfill their contractual obligations in the phase of construction of works, infrastructure system according to the contract; in case it is necessary to extend construction time, the investor must request the extension of the corresponding period of validity of the contract performance guarantee.

4. PPP project enterprise shall be returned or released with contract performance guarantee after fulfilling the obligation to build facility, infrastructure system, except for the case stipulated in clause 5 of this Article; for O&M contracts, the performance guarantee is returned or released after the investor fulfills its contractual obligations.

5. The PPP project enterprise shall not be refunded or released a contract performance guarantee in the following cases:

a) Refuse to perform the contract after signing the contract;

b) Violating the agreement in the contract, leading to the termination of the contract ahead of time as stipulated in point d, clause 2, Article 52 of this Law;

c) The validity of the contract performance guarantee is not extended as stipulated in Clause 3 of this Article.

6. The Government shall regulate the percentage of the value of contract performance guarantee stipulated in clause 2 of this Article.

#### **Article 49. Signing PPP project contract**

1. The contract is signed pursuant to approval of investor selection result, contract negotiation result, the valid bid, the updated information on capabilities of investor at the time of contract signing, the bidding document.

2. The investor, the PPP project enterprise shall join as one party to sign the project contract with the contract signing agency.

3. For the joint-venture investor, all members of the joint-venture shall sign and stamp (if any) directly in the contract.

## **Article 50. Revision of PPP project contract**

1. Revision of PPP project contract shall be stipulated in the contract and considered by parties in the following cases:

a) The project is affected by force majeure events or substantial change in circumstances or change in master-plans, policies, relevant laws and regulations, which leads to significant impact on technical and financial plans of the projects, tariff and fee of public goods and services provided by the project enterprise;

b) Adjustment of one of the contracting parties;

c) Adjustment of the PPP project contract duration as stipulated in clause 2 and clause 3 Article 51 of this Law;

d) Other cases under the authority of the contract signing agency without changing the in-principle investment approval, which bring about better financial efficiency, socio – economic effectiveness for the project.

2. Procedure of revision of PPP project contract is stipulated as follows:

a) One of the contracting parties issues written proposal for revising the contract, which states clearly the case to be applied for consideration of revision;

b) The parties negotiate the proposed to-be-revised contents, including tariff, fee of public goods and services; contract duration; other contents of contract that need changing;

c) The parties shall sign the annex of contract for the revision contents.

3. In case that revision of PPP project contract leads to change of objectives, location, scale, contract type of PPP project, increase in total investment of 10% and above or increase in state capital in PPP project after the reserve has been used up, it is required to implement adjustment of in-principle investment approval stipulated in Article 18 of this Law before signing the contract annex for to-be-revised contents.

## **Article 51. PPP project contract duration**

1. The contract duration shall be agreed by the parties based on the approval of PPP project and the investor selection result.

2. The parties are allowed to adjust the contract duration, provided that the total contract duration, including the adjusted time, shall not exceed the duration of land allocation or land lease in accordance with the land law and not lead to change of other contents stated in-principle investment approval of the project.

3. The cases of adjustment on contract duration include:



a) Delays in completion of construction phase or interruption in operation period of facility, infrastructure system due to substantial change in circumstances according to the civil law beyond reasonable control of one party;

b) The competent agency or other State authorities suspend the project, except for case where the suspension is due to fault of the PPP project enterprise;

c) Increase in costs as request of the competent agency, the contract signing agency which are not estimated upon contract signing and if the project duration is not extended, the PPP project enterprise is not able to recover those costs;

d) When there is a change in the mater-plans, policies and relevant laws and regulations, the real revenue reduces by less than 75% compared to the revenue in the financial plan specified in the contract;

dd) When the real revenue increases from 125% or more compared to the revenue of financial plan specified in the contract.

#### **Article 52. Termination of PPP project contract**

1. Termination of PPP project contract shall be implemented according to the contract, as the basis for contract liquidation.

2. Early termination of PPP project contract shall only apply in the following cases:

a) Project is affected by force majeure events, in which the parties have taken remedial measures but could not ensure the continuous implementation of PPP project contract;

b) For the interests of the nation, assurance of requirements on national defense, security, state secret;

c) When PPP project enterprise is insolvent in accordance with the bankruptcy law;

d) When one of the contracting parties seriously violates the performance of obligations according to contract;

dd) Other cases due to substantial change in accordance with the civil law, that the contracting parties agree on contract termination.

3. The signing contract agency must report to the competent authority before terminating the contract.

4. In case of early termination of contract, the signing contract agency shall perform the tasks as follows:

a) Coordinating with the lender to select alternate investor to sign the new PPP project contract;

b) During the time that the handling plan has not been implemented, alternative investor has not been selected, the contract signing agency shall be temporarily

responsible for organizing safety assurance and preventing degradation of facility, infrastructure system for project in the construction stage; organization of operation and conduction of business on facility, infrastructure system to ensure continuity of the provision of public goods and services for project in operation stage.

5. The contract signing agency performing the tasks specified in clause 4 of this Article may use the capital sources stipulated in clause 3, Article 73 of this Law and other lawful revenue sources.

6. In case of early termination of PPP project contracts stipulated in point b clause 2 of this Article or due to the fact that contract signing agency seriously violates the performance of contractual obligations stipulate in point d, clause 2 of this Article, the cost of the acquisition of PPP project enterprise or contract termination compensation shall be allocated from the state capital according to applicable laws and regulations; in case of termination due to investor's fault as stipulated in points c and d, clause 2 of this Article, investor shall transfer shares or contributed capital to the alternate investor.

7. The Government shall provide guidance on this Article.

#### **Article 53. Rights of lenders**

1. Within duration for PPP project contract implementation, the lender's rights shall comply with the agreement of the parties in the credit agreement, PPP project contract and relevant laws and regulations.

2. In case of early termination of PPP project contracts that requires selection of alternate investor, the lender shall coordinate with the signing contract agency to select an alternate investor stipulated in point b, clause 1, Article 39 of this Law.

3. The content stipulated in clause 2 of this Article must be agreed in writing between the contract signing agency, the lender and the investor, the PPP project enterprise.

#### **Article 54. Assignment of shares, capital contribution, rights and obligations of PPP project contract**

1. In case PPP project enterprise is established by a joint-venture investor, members have the right to assign shares, capital contribution to each other, but must ensure the minimum equity ratio of each member in accordance with point a, clause 2, Article 41 of this Law.

2. The investor has the right to assign shares, capital contribution to another investor after completion of construction for project with construction component or upon commencement of the operation phase for project without construction component.

3. Assignment as stipulated in clause 1, clause 2 of this Article shall meet the requirements as follows:

- a) Not lead to any change in the implementation of the signed PPP project contract;
- b) Conform to the relevant laws and regulations;
- c) Be approved by the contract signing agency;
- d) Obtain agreement of lenders and members of the joint-venture if the investor is a joint-venture.

4. The assignee shall satisfy the following requirements:

- a) There is no restriction on the right to receive a transfer in accordance with relevant laws and regulations;
- b) Having sufficient financial capacity and business capabilities to perform PPP project contract and other relevant contracts;
- c) Committing to continue exercising the rights and obligations of the assignor according to the provisions of the PPP project contract and other relevant contracts.

5. In case the assignment of contractual rights and obligations as stipulated in clause 1 and clause 2 of this Article leads to change in the contents of business registration, the PPP project enterprise shall implement in compliance with relevant stipulations of law and regulations on enterprises.

#### **Article 55. Governing law for PPP project contract**

PPP project contract, its annex and other relevant documents signed between the Vietnam state agency and investor, PPP project enterprise shall be governed by Vietnamese laws and regulations. For those issues that have not been regulated in Vietnamese laws and regulations, the parties may agree specifically in the PPP project contract on the basis of creating no contradictions to the basic principles of Vietnamese laws and regulations.

### **Chapter V**

#### **PPP PROJECT CONTRACT IMPLEMENTATION**

##### **Section 1**

#### **CONSTRUCTION OF FACILITY, INFRASTRUCTURE SYSTEM**

##### **Article 56. Preparation of construction site**

The Provincial People's Committee shall chair and co-operate with the competent agency, the contract signing agency to organizing land clearance and completing procedures for land allocation or land lease, handover the ground to implement the

project in accordance with the law and regulations on land, PPP project contract and other relevant contracts.

**Article 57. Preparation, appraisal, approval of designs after basic designs and cost estimation**

1. Pursuant to the feasibility study and provisions of PPP project contract, the project enterprises shall carry out one or several tasks as below:

a) Formulate the construction design after basic design, for sub-project or component using public investment capital, cost estimation shall be formulated to submit to the construction specialized agency for appraisal in accordance with law and regulations on construction;

b) Formulate design for sub-project or component using public investment capital, cost estimation shall be formulated to submit to the specialized agency for appraisal in accordance with other relevant laws and regulations to organize the appraisal.

2. The PPP project enterprise shall approve designs, the cost estimation stipulated in clause 1 of this Article and submit to the contract signing agency the following documents in order to conduct the monitoring and supervision:

a) The approved design dossiers and cost estimation;

b) The appraisal documents of specialized agencies on design, cost estimation.

**Article 58. Selection of contractor for PPP project implementation**

PPP project enterprise shall issue regulation on selection of contractors to be applied consistently in the project enterprise based on the following principles:

1. Ensure the fairness, transparency and economic efficiency.

2. Ensure that it does not impact or negatively affect national defense, security, state secret, national interests, community interests and interests of competent agency and contract signing agency.

3. Selected contractors must fully meet the requirements for qualification, experiences and have feasible solutions for implementation of package, project; be responsible for the quality and progress of package execution under the contract signed with the PPP project enterprise, in which presents the binding content of responsibility if the quality of the facility, infrastructure system does not meet the requirements of the PPP project contract. The PPP project enterprise is responsible for the quality and progress of the project.

4. The use of domestic contractor is encouraged for the work within capacity of domestic contractor.

5. Foreign labour shall only be used if domestic labour does not meet the requirements.

**Article 59. Management and supervision of the quality of facility, infrastructure system**

1. The PPP project enterprise is responsible for organizing the management, supervision of the quality, acceptance of items and entire facility, infrastructure system according to applicable laws and regulations.

2. During the construction of facility, infrastructure system as specified in the contract, the contract signing agency is responsible for:

a) Organizing the inspection on the PPP project enterprise's supervision on the construction process of facility, infrastructure system;

b) Inspecting the compliance with procedures, standards and norms for the construction;

c) Carrying out the verification of the quality of parts, components and the whole of facility, infrastructure system when there is any suspicion of the quality or at the request of a state management agency;

d) Proposing the PPP project enterprise to request the contractor to adjust or suspend construction when it considers that the quality of work performed does not meet the requirements.

3. The contract signing agency may recruit consultants to assist in their fulfillment of the responsibilities specified in clause 2 of this Article.

4. The costs of recruiting consultant to verify the quality and other relevant expenses shall be performed as follows:

a) If the contract signing agency concludes that the quality of infrastructure facilities and systems does not meet the requirements of the contract due to the fault of the PPP project enterprise, the contractor, the PPP project enterprise must pay the costs;

b) In case the contract signing agency concludes that the quality of facility, infrastructure system meet the requirements of the contract or concludes that the quality does not meet the requirements of the contract but is not due to the fault of the PPP project enterprise, the contract signing agency shall use the project implementation expenses prescribed in clause 3, Article 73 of this Law for payment.

**Article 60. Finalization of investment capital for the construction of facility, infrastructure system**

1. Upon the completion of construction of facility, infrastructure system, the contract signing agency shall perform the finalization of public investment capital in the PPP projects as below:

a) In case the portion of public investment capital in PPP project is managed and used as prescribed in point a clause 5 Article 70 and clause 2 Article 72 of this Law, the contract signing agency and the PPP project enterprise shall carry out procedures to finalize public investment capital in PPP project pursuant to the laws and regulations similarly to public investment projects;

b) In case the portion of public investment in PPP project is managed and used as prescribed in point b clause 5 Article 70 of this Law, the contract signing agency shall aggregate the amount which has been disbursed to the PPP project enterprise and audited by independent auditors a basis for finalizing amount of public investment capital in PPP project. The public investment capital in PPP project shall be finalized not exceeding the limit of state capital determined in the contract.

2. Upon the completion of construction of facility, infrastructure system, the contract signing agency and the PPP project enterprise shall carry out finalization the investment capital for construction of facility, infrastructure system. The amount of investment capital for construction of facility, infrastructure system or the finalized amount for project without construction component shall be determined based on the signed contract.

3. The contract signing agency and the PPP project enterprise shall agree on selecting an independent qualified auditing organization to audit the investment capital for construction of facility, infrastructure system.

4. The Government shall provide guidance on this Article.

#### **Article 61. Certification of completion of infrastructure facilities and systems**

1. Upon completion of infrastructure facilities and systems, the PPP project enterprise shall carry out acceptance of the facility, infrastructure system according to the law and regulations on construction or other relevant laws and regulations as the basis to formulate the dossier requesting for certification of completion.

2. Based on the dossier requesting for certification of completion of facility, infrastructure system according to clause 1 of this Article, the contract signing agency shall inspect and issue the certification of completion to the PPP project enterprise. In case a PPP project enterprise is able to complete the construction phase ahead of schedule or to save investment costs, the certification of completion of facility,

infrastructure system shall not affect the contract duration or schedule of tariff, fee of public goods and services stipulated in the contract.

3. The Government shall regulate on dossier and timeline for issuance of certification of completion of facility, infrastructure system.

## **Section 2**

### **MANAGEMENT, OPERATION, CONDUCTION OF BUSINESS ACTIVITIES OF INFRASTRUCTURE FACILITIES AND SYSTEMS**

#### **Article 62. Management of PPP project**

The management of facility, infrastructure system and other assets during the implementation of PPP project shall comply with this Law, other relevant laws and regulations and PPP project contract.

#### **Article 63. Conditions for commercial operation of facility, infrastructure system**

1. Except for the case stipulated in clause 2 of this Article, the project enterprise shall be allowed to commercially operate the facility, infrastructure system upon the certification of completion by the contract signing agency as stipulated in Article 61 of this Law.

2. Regarding PPP projects applying O&M contract, PPP project enterprise shall commercially operate the facility, infrastructure system from the effective date of PPP contract.

#### **Article 64. Provision of public goods, services**

1. During the commercially operation of infrastructure facilities and systems, PPP project enterprises shall have the following responsibilities:

a) Exercise of rights and obligations to supply public goods, services and other conditions agreed in the contract;

b) Ensure the use of facility, infrastructure system in accordance with the conditions specified in the contract;

c) Treat all users of public goods, services provided by PPP project enterprise fairly; shall not be allowed to refuse provision of public goods, services to users;

d) Receive and promptly handle user's comments on the quality of public goods, services provided by the PPP project enterprise;

dd) Conduct periodical repairing and maintenance to ensure the safe operation of facility, infrastructure system as per the designs or processes committed in the contract.

2. Competent agency, signing contract agency shall coordinate with PPP project enterprise to perform responsibilities specified in point d, clause 1 of this Article.

#### **Article 65. Tariff, fee of public goods, services**

1. Tariff, fee of public goods, services and conditions, procedures for adjustment shall be specified in the PPP project contract on the principle of ensuring the interests of investor, PPP project enterprise, users and the State and enabling the investor, PPP project enterprise to recover investment capital and gain profits. The tariff, tariff framework for public goods and services throughout the contract duration must specify the starting tariff and the tariff for each period to ensure the correctness, adequacy and publicity, transparency of the tariff forming elements.

2. The application of subsidy of tariff, fee of public goods and services shall subject to applicable laws and regulations.

3. Agreement on adjustment of tariffs, fee of public goods, services for each period in PPP project contract shall comply with the law and regulations on tariff, fee.

4. When adjusting the tariff, fee for public goods and services, the disclosure of adjusted information is performed as follows:

a) At least 10 days before the application of adjusted tariff, fee of public goods or services, the contract signing agency shall disclose information in accordance with Article 9 of this Law;

b) PPP project enterprise shall list the adjusted tariff and fee of public goods, services at the places of supplying public goods and services in accordance with the law on tariff and fee.

#### **Article 66. Supervision of the quality of public goods and services**

1. PPP project enterprise shall ensure and be responsible for the quality of public goods, services according to PPP project contract.

2. The contract signing agency shall be responsible for organizing the supervision of the quality of public goods, services provided by the PPP project enterprise under the PPP project contract.

3. In case of considering that the quality of public goods, services does not meet the requirements of project contract, the contract signing agency shall require PPP project enterprise to remedy by the deadline stipulated in the contract; in case the PPP project enterprise fails to remedy or delay the rectification, the measures to handle violations as stipulated in the contract shall be applied.

4. The contract signing agency may recruit consultant to assist in their fulfillment of the responsibilities specified in clause 2 of this Article. The costs of recruiting the consultants shall be paid in accordance with clause 4 Article 59 of this Law.



### **Section 3**

## **TRANSFER OF FACILITY, INFRASTRUCTURE SYSTEM, PPP PROJECT CONTRACT LIQUIDATION**

### **Article 67. Transfer of facility, infrastructure system**

1. Transfer of facility, infrastructure system and verification of the quality, value of facility, infrastructure system before transferring shall be implemented due to the stipulations in the PPP project contract. The remaining value of infrastructure facility, infrastructure system after being transferred is aggregated into the state asset and state budget according to law and regulations on management and use of public assets and law and regulations on state budget.

2. Process and procedure of handling the transferred assets shall comply with the law and regulations on management and use of public assets.

3. The Government shall provide guidance on Clause 2 of this Article.

### **Article 68. PPP project contract liquidation**

1. The PPP project contracts shall be liquidated as follows:

a) In case the parties have fulfilled their contractual obligations; the contract signing parties confirm the fulfillment and termination of rights and obligations of the parties;

b) In case the contract is terminated early according to the provisions of clause 2 Article 52 of this Law, the contract signing parties shall confirm the fulfilled obligations and the parties' responsibilities for the parts that have not been finished.

2. The deadline for liquidation of a PPP project contract shall be agreed by the contracting parties, but must not exceed 180 days from the date the parties fulfil the contractual obligations in the contract or the date of the parties agreed to early termination of contract.

3. In case of expenses incurred when liquidating a contract prescribed in clause 1 of this Article, the content of contract liquidation must determine the obligations of the contract signing agency and the PPP project enterprise for the expenses incurred.

## **Chapter VI**

### **SOURCES OF CAPITAL FOR PPP PROJECT IMPLEMENTATION**

#### **Section 1**

### **STATE CAPITAL IN PPP PROJECT**

#### **Article 69. Use of state capital in PPP project**

1. State capital shall be used for the following purposes:

a) To support the construction of facility, infrastructure system of PPP project;

b) To make payment to the PPP project enterprise for provision of public goods, services;

c) To pay the cost of compensation, land acquisition, support and resettlement; support on constructing the temporary facility;

d) To pay the revenue shortfall;

dd) Expenditures of the competent agency, the contract signing agency, the PPP project preparation unit, the procuring entity in order to implement their duties as stipulated in Article 11 of this Law;

e) Expenditures of the appraisal council of PPP project, the assigned unit for appraisal of PPP project.

2. The percentage of state capital for PPP project as prescribed in points a and c, clause 1 of this Article shall not exceed 50% of the total investment of the project. For project composing of various component projects, including the component project applying PPP investment modality, the percentage of state capital as stipulated in this clause shall be determined on the total investment of that component project.

3. The Government shall provide guidance on the use and management of state capital in PPP project.

**Article 70. State capital for supporting the construction of facility, infrastructure system**

1. State capital for support to the construction of facility, infrastructure system means the state capital used for support to the implementation of the project during the construction period to increase the financial efficiency of the project.

2. Percentage of state capital for support to the construction of facility, infrastructure system shall be determined on the basis of the preliminary financial plan presented in pre-feasibility study when approving in principle the investment.

3. Percentage and value of state capital for support to the construction of facility, infrastructure system shall be paid as stipulated in PPP project contract.

4. State capital for support to the construction of facility, infrastructure system is allocated from the following sources:

a) Public investment capital as regulated in the law and regulations on public investment;

b) Value of public assets as regulated in the law and regulations on the use and management of public assets.

5. The use and management of State capital for support to the construction of facility, infrastructure system which is allocated from public investment fund shall be carried out in one of the following forms:

a) Separating into sub-project in PPP project. The management and use of state capital shall comply with the law and regulations on public investment;

b) Allocating into specific component according to the percentage and value, schedule and conditions stipulated in the contract.

**Article 71. State capital for payment to the PPP project enterprise for provision of public goods, services**

State capital which is used to pay for PPP project enterprise in BLT contract and BTL contract based on the quality of public goods, services shall be allocated from state capital in PPP project and other lawful capital sources according to the applicable laws and regulations.

**Article 72. State capital for compensation, land clearance, support on resettlement; support on construction of temporary facility**

1. State capital for compensation, land clearance, support on resettlement; support on construction of temporary facility shall be allocated from public investment capital in accordance with law and regulations on public investment.

2. Based on the size and nature of each project, the contract signing agency shall consider the separation of State capital for for compensation, land clearance, support on resettlement; support on construction of temporary facility into component project(s) or sub-projects and implement such project(s) in accordance with law and regulations on public investment.

**Article 73. Expenditures of competent agency, contract signing agencies, PPP project preparation unit, procuring entity, appraisal council of PPP project, unit assigned to appraise PPP project**

1. The expenditures for project preparation of competent agency, PPP project preparation unit; the cost for organizing appraisal of the appraisal council of PPP project and the unit assigned to appraise PPP project; the cost for organizing the investor selection and signing contract of competent agency, procuring entity shall be allocated from public investment capital, other legal capital and shall be counted into the total investment of the project.

2. The selected investor is responsible for refunding the expenditures stipulated in clause 1 this Article to the state budget in accordance with law and regulations on state budget or to other lawful capital source that was used to prepare the project.

3. The cost of project implementation after contract signing incurred by the competent agency, the contract signing agency shall be allocated from the regular capital source of these agencies.

#### **Article 74. Planning for public investment capital used in PPP project**

Planning for public investment capital used in PPP project is stipulated as follows:

1. Pursuant to the in-principle investment approval by the competent authority, public investment capital used in PPP project shall be consolidated in the medium-term public investment plan.

2. Pursuant to the medium-term public investment plan, the feasibility study approved by the competent authority, the result of investor selection, public investment capital used in PPP projects shall be consolidated in the annual public investment plan.

3. In case PPP project that needs to use public investment capital but is not included in the list of projects in the medium-term public investment plan, it shall be considered, supplemented to this list using contingency source for medium-term public investment plan by the competent authorities. The process and procedure for adjusting the medium-term public investment plan shall comply with the law and regulations on public investment.

4. In case the PPP project applying BTL contract, BLT contract type that uses public investment capital to pay for the PPP project enterprise, the consolidation of public investment into the medium-term and annual public investment plans shall be in accordance with clause 1, clause 2 of this Article. Based on the PPP project contract term, public investment capital shall continue to be arranged in the next medium term.

#### **Article 75. Estimating the recurrent expenditures and lawful incomes for regular spending of the state agency and publicly established non-for-profit unit**

1. Based on the in-principle investment approval, the feasibility study report approved by the competent authorities and the result of investor selection, the contract signing agency estimates the annual budget of the recurrent expenditure, the lawful incomes for regular spending of the state agency, the publicly established non-for-profit unit in order to pay for PPP project enterprise according to law and regulations on state budget.

2. For the recurrent expenditure stipulated in clause 3 Article 73 of this Law, the competent agency, the contract signing agency shall estimate the annual budget and submit to the competent authority for approval according to law and regulations on state budget.

### **Section 2**

## **CAPITAL FOR PPP PROJECT IMPLEMENTATION**

## **OF INVESTOR AND PPP PROJECT ENTERPRISE**

### **Article 76. Financial arrangement for PPP project implementation**

1. Investor, PPP project enterprise are responsible for the contribution of equity and mobilization of loans and other lawful sources of capital to implement the project in accordance with stipulations in PPP project contract. The total loans of various borrowing forms must not exceed the total borrowing amount specified in the PPP project contract.

2. Within 12 months from the contract signing date, the investor, PPP project enterprise shall complete the financial arrangement; for project of which the investment is approved in principle by the National Assembly, the Prime Minister, the duration time may be extended but not exceed 18 months.

3. Form of handling in case the investor and PPP project enterprise cannot arrange their finance according within the duration prescribed in clause 2 of this Article must be specified in bidding document.

### **Article 77. Contribution of equity**

1. The investor must contribute equity of at least 15% of the total project investment excluding the state capital stipulated in Article 70 and 72 of this Law.

2. Investors must contribute equity capital according to the schedule agreed in the PPP project contract.

### **Article 78. Issuance of PPP project enterprise bond**

1. The PPP project enterprise shall be allowed to issue, and redeem its private placement bond issued according to the provisions of this Law, law and regulations on enterprises, law and regulations on securities in order to mobilize capital for implementation of PPP project; it is not allowed to issue convertible private placement bond and warrant-linked private placement bond.

2. The issuance of bond under the provisions of clause 1 this Article must meet the following conditions:

a) The amount of capital mobilized through the issuance of bond shall not exceed the value of the total borrowing amount determined in the PPP project contract;

b) The capital mobilized through the issuance of bonds is not allowed to be used for any purpose other than implementing the project under the PPP project contract or for restructuring debts of enterprise;

c) PPP project enterprise must open a blockage accounts to receive money from issuing bond. The disbursement of capital from bond issuance shall comply with the provisions of point b of this clause.

3. PPP project enterprise that operates for less than 1 year when issuing bond according to clause 1 of this Article shall be exempted from the conditions on presenting

the audited financial statement of the year preceding the issuance year stipulated in the law on enterprise.

4. The Government shall provide guideline on this Article.

## **Chapter VII**

### **INVESTMENT INCENTIVES AND GUARANTEES**

#### **Article 79. Investment incentives**

Investor and the PPP project enterprise are entitled to incentives on taxes, land use fees and other incentives as prescribed by laws and regulations on taxation, land, investment and other relevant regulations.

#### **Article 80. Investment assurance**

1. Investor, PPP project enterprise are entitled to investment assurance as prescribed in this law and law and regulations on investment.

2. Assurance of access to land, exercise of land use rights and rights to use public property is stipulated as follows:

a) The PPP project enterprise to whom the State allocate or lease out the land by shall be allowed to use other public assets to implement PPP project contract in accordance with the law on land and the law on management and use of public assets;

b) The land use purpose of the project shall remain unchanged for the entire implementation term of the contract; including the case that lenders exercise their rights as prescribed in Article 53 of this Law.

3. Assurance of the provision of public goods is stipulated as follows:

a) The PPP project enterprise is permitted to use public facilities and other ancillary works to implement the project in accordance with law;

b) Where public services are scarce or where public facilities are limited to certain users, the project enterprise shall be given priority to be served with such services or to be granted the right to use such public facilities for the implementation of the project;

c) The competent agency shall be responsible for assisting the PPP project enterprise in conducting necessary procedures in order to obtain the priority in using public services and facilities.

4. Mortgage of assets, the rights to commercially operate the facility, infrastructure system is stipulated as follows:

a) The PPP project enterprise are permitted to mortgage assets, land use rights and the right to commercially operate the facility, infrastructure system for the lender in accordance with the law on land and the civil codes. The term of a mortgage must not exceed the term of the contract, unless the contract stipulates otherwise.

b) The agreement to mortgage assets or the rights to commercially operate the facility, infrastructure system must be made in writing and signed by the lender and the contract signing parties.

c) The mortgage of assets or of the rights to commercially operate the facility, infrastructure system must not adversely affect the objectives, scale, technical specifications, project implementation schedule or other conditions already agreed in the project contract.

5. The contract signing agency and competent authority shall coordinate with local government in implementing PPP project to ensure security and safety of human resource and assets of PPP project enterprise, contractor during the implementation of PPP project.

### **Article 81. Ensuring the balance of foreign currency for important PPP project**

1. The Government shall decide on the application of guarantee mechanism on the balance of foreign currency for the project of which the investment is approved in principle by the National Assembly, the Prime Minister, based on the foreign exchange management policy, the ability to balance foreign currency in each period.

2. In the case that PPP project enterprise implementing the project stipulated in clause 1 of this Article already exercises the right to purchase foreign currency to meet the demand for current transactions, capital transactions and other transactions or transferring capital, profit and other investment liquidations to overseas in accordance with the law and regulations on foreign exchange management but the market does not meet the lawful foreign currency demand of project enterprise, it shall be guaranteed to foreign currency balance of no more than 30% project revenue in Vietnamese Dong after subtracting the expenditures in Vietnamese Dong.

### **Article 82. Mechanism for sharing revenue surplus and shortfall**

1. When actual revenue reaches more than 125% of the revenue in the financial plan in PPP project contract, the investor, PPP project company shall share with the State 50% of the surplus between actual revenue and 125% of revenue in the financial plan. Sharing the surplus shall be applied after adjusting tariff, fee of public goods, services, adjusting PPP contract duration as stipulated in Articles 50, 51 and 65 of this Law and being audited by the State Audit on the surplus.

2. When actual revenue reaches less than 75% of the revenue in the financial plan in PPP project contract, the State shall share with the investor, the PPP project company 50% of the shortfall between 75% of revenue in the financial plan and actual revenue. Sharing revenue shortfall is applied when the following conditions are met:

- a) The project applies the BOT, BTO, BOO contract type;
- b) Change in master-plan, policy, relevant laws leads to revenue shortfall;
- c) Having implemented all measures to adjust the tariff, fee of public goods, services, adjust the duration of PPP project contract as stipulated in Articles 50, 51 and 65 of this Law but not reached the minimum revenue of 75%;
- d) Have been audited by the State Audit on the revenue shortfall.

3. Mechanism of sharing the revenue shortfall regulated in clause 2 of this Article shall be determined in the in-principle investment approval. Expenses for handling the mechanism for sharing revenue shortfall shall be from the central budget reserve for project under in-principle investment approval competence of the National Assembly, the Prime Minister, Minister, Head of central agency and other agency or local budget reserve for project under in-principle investment approval competence of Provincial People's Council.

4. Annually, the parties to the PPP project contract shall determine actual revenue, submit to the competent financial authority for the implementation of mechanism for revenue surplus and shortfall sharing. The accounting of state budget revenue and expenditure when sharing the revenue surplus or shortfall shall comply with law and regulations on state budget.

5. The Government shall provide guidance on this Article.

## **Chapter VIII**

### **EXAMINATION, INSPECTION, STATE AUDIT AND SUPERVISION OF PPP INVESTMENT ACTIVITIES**

#### **Section 1**

#### **EXAMINATION AND INSPECTION, STATE AUDIT OF PPP INVESTMENT ACTIVITIES**

##### **Article 83 Examination of PPP investment activities**

- 1. Contents of examination of PPP investment activities include:
  - a) The promulgation of guiding documents on PPP investment by the competent agencies;
  - b) Investment preparation, organization of investor selection, signing and implementing contracts;
  - c) Other activities related to PPP investment.



2. Examination of PPP investment activities shall be conducted regularly or at the discretion of the head of the examination competent authority.

#### **Article 84. Inspection of PPP investment activities**

1. Inspection of PPP investment activities means the specialized inspection according to law on inspection.

2. Inspection of PPP investment activities is carried out towards the competent agencies, the contract signing agencies, the investors, the PPP project enterprises, organizations or individuals involved in PPP investment activities specified in this Law.

#### **Article 85. State audit in PPP investment**

1. Audit the management and use of public finance, public assets and activities related to the management and use of public finance and public assets participating in PPP project in accordance with law on state audit.

2. Audit when implementing the mechanism for sharing revenue surplus, shortfall in accordance with Article 82 of this Law.

3. Audit the entire value of PPP project assets when transferring to the State.

### **Section 2**

#### **SUPERVISION OF PPP INVESTMENT**

#### **Article 86. Supervision of the State administration agency on PPP investment**

1. The State administration agency on PPP investment at the central level shall supervise the process of implementing PPP projects as stipulated in points a, b and c clause 3 Article 4 of this Law and other projects as assigned by the National Assembly and the Prime Minister.

2. Local State administration agency on PPP investment shall supervise the implementation process of PPP projects as stipulated in point d clause 3 Article 4 of this Law.

#### **Article 87. Contents of supervision of the State administration agency on PPP investment**

1. Bidding document.

2. Result of investor selection.

3. The implementation of PPP project contract.

4. The results of the construction, infrastructure facilities quality verification as prescribed in point c, clause 2, Article 59 of this Law.

5. Results of public goods, services quality evaluation according to the provisions of clause 3, Article 66 of this Law.

6. Other contents at the requests of the National Assembly, the Prime Minister for cases prescribed in clause 1 Article 86 of this Law; at the requests of Provincial People's Council for cases prescribed in clause 2 Article 86 of this Law.

**Article 88. Supervision of the Vietnamese Fatherland Front and the community**

Vietnamese Fatherland Front at all levels shall assume for supervising and guiding the investment supervision of the community where the PPP project is implemented in accordance with the law on the Vietnamese Fatherland Front and laws and regulations on community's investment supervision.

**Chapter IX**

**DUTIES, POWERS AND RESPONSIBILITIES  
OF STATE ADMINISTRATION AGENCIES IN PPP INVESTMENT**

**Article 89. Duties and powers of the Government, the Prime Minister**

1. The Government has the following duties and powers:

- a) Unify the state administration on PPP investment nation-wide;
- b) Promulgate according to its competence or submit to competent authorities legislative documents on PPP investment;
- c) Organize the examination, inspection of implementation PPP investment.

2. The Prime Minister has the following duties and powers:

- a) Promulgate according to its competence legislative documents on PPP investment;
- b) Decide to cancel or suspend the PPP project contract of project to which the investment is approved in principle by the National Assembly, the Prime Minister.

**Article 90. Duties and powers of the Ministry of Planning and Investment**

1. Perform the function of the state administration agency on PPP investment at the central level, take responsibilities before the Government for implementation the state administration on PPP investment nation-wide.

2. Promulgate according to its competence or submit requests to competent authorities to issue legislative documents in PPP investments.

3. Preside over and coordinate with the competent agencies to examine, inspect, supervise; annual consolidate, evaluate the implementation of PPP projects nation-wide.

4. Develop and manage the information system and database on PPP investments.
5. Perform other duties and exercise other powers stipulated by legal regulations.

#### **Article 91. Duties and powers of the Ministry of Finance**

1. Promulgate according to its competence or submit to competent authorities to issue legislative documents relating to financial mechanism on PPP investment.
2. Lead in formulating and implementing a mechanism for sharing of the revenue surplus, shortfall of project for which the National Assembly, the Prime Minister, Ministers, Head of central-level agencies and other agencies having authority to approve in principle the investment.
3. Perform other duties and exercise other powers stipulated by legal regulations.

#### **Article 92. Duties and powers of ministries, central-level agencies, other agencies**

1. Undertake the administration and provide guidance on PPP investment in sectors within the scope of its administration.
2. Undertake the responsibilities of the competent agency stipulated in Article 94 of this Law for PPP projects within their competence.
3. Annually summarize, evaluate and report the status of PPP project implementation within the scope of its administration.
4. Undertake other duties and exercise other powers stipulated by legal regulations.

#### **Article 93. Duties and powers of Provincial-level People's Committees**

1. Perform function of the state administration agency on PPP investment at local level.
2. Undertake the responsibilities of the competent agency stipulated in Article 94 of this Law for PPP project contracts within their own competence; decide to cancel or suspend PPP contract of project to which the investment is approved in principle by the Provincial-level People's Council;
3. Annually summarize, evaluate and report the status of PPP project implementation within the scope of local administration;
4. Lead and coordinate with PPP project enterprise to organize compensation, land clearance, support on resettlement for project within its administration; preside and co-ordinate with ministries, central-level agencies, other agencies, PPP project enterprise to organize compensation, support on resettlement for project under their administration.

5. Perform other duties and exercise other powers stipulated by legal regulations.

#### **Article 94. Responsibilities of the competent agencies**

1. Organize the preparation of pre-feasibility study, feasibility study of PPP projects and organize the selection of investors, negotiate and sign PPP project contracts according to their competence stipulated in this Law.

2. Cancel the procurement process, suspend the procurement process, reject investor selection results or nullify decisions of procuring entities when violations of regulations on PPP investments, investor selection or other relevant legislations are detected.

3. Decide to cancel, suspend PPP contract of project under its in-principle investment approval competence, according to the provisions of this Law.

4. Requesting the procuring entities, contract signing agencies to provide materials and documents for the examination, inspection, supervision and monitoring, handling petitions, sanctioning violations on PPP investments.

5. Compensate for damage according to the provisions of law.

6. Be accountable for the implementation of the stipulations in this Article at request of the supervisory agency, examination and inspection agency, and the state administration agency on PPP investment.

7. Publicize PPP project information; periodically report to the PPP State administration agency at central level on the implementation of PPP projects under their authority.

8. Perform other responsibilities stipulated by this Law.

### **Chapter X**

#### **RESOLUTION OF COMPLAINTS, DISPUTES AND VIOLATIONS**

##### **Article 95. Resolution of complaints in investor selection**

1. When an investor has grounds to believe that their legitimate rights and benefits are affected, the investor has the right to:

a) File complaint to the procuring entity, the competent agency about the investor selection process; investor selection result in compliance with the resolution procedures as stipulated in Article 96 of this Law;

b) Initiate a lawsuit at the Court within the prescription validity according to the provisions of civil law.

2. Procuring entity and competent agency shall not consider and handle complaints if investor have instituted lawsuit at the Court; in case the process of settling a complaint

is happening according to the process specified in Article 96 of this Law, the agency that is handling the complaint shall issue a notice to terminate the consideration and settlement of the complaint.

#### **Article 96. Procedure to settle a complaint in selection of investor**

1. The procedure to settle a complaint on investor selection process shall be implemented as follows:

a) The investor files the complaint in writing to the procuring entity from the occurrence of the incident to the announcement date of investor selection result;

b) The procuring entity must send a written complaint resolution to the investor within 7 working days after receiving the investor's complaint;

c) In case the procuring entity has no written response, or the investor does not agree with the results of the complaint resolution, the investor has the right to send the complaint letter to the competent agency within 5 working days from the deadline for response or the date of receiving the written response from procuring entity;

d) Competent agency must send a written resolution of the complaint to the investor within 07 working days from the date of receiving the written complaint of the investor.

2. The procedure to settle a complaint on investor selection result shall be implemented as follows:

a) The investor files the written complaint to the procuring entity in a period of 10 days from the date of receiving the announcement of the investor selection result;

b) The procuring entity must send written complaint resolution to the investor within 15 days from the date of receipt of the investor's complaint;

c) In case the procuring entity has no written resolution, or the investor does not agree with the results of the complaint resolution, the investor has the right to send the written complaint simultaneously to the competent authority and the standing authority of advisory board to resolve the complaint within 05 working days from the deadline for response or the date of receiving the written response from the procuring entity;

Advisory council on complaint resolution at central level is established by Minister of Planning and Investment; at ministries, central-level agencies and other agencies by ministers, heads of central-level agencies and other agencies; at local level by the Chairman of Provincial People's Committee;

d) After receiving the written complaint, the complaint resolution advisory board has the right to request the investor, the procuring entity and the relevant agency to provide the information for consideration and submit the written report to the competent agency on its position asto the complaint within a period of 30 days from the date of receiving the investor's complaint;

dd) If needed, based on the complaint contents, the complaint resolution advisory

board may request the competent agency to consider temporary suspension of the selection process. If the request is approved, within 5 working days from the date of receiving the written request from the advisory board, the competent agency shall issue a written notice of the temporary suspension of selection process. Such notice shall be sent to the procuring entity and investor within 5 working days from the date of the notice of temporary suspension of selection process. The temporary suspension duration shall be calculated from the date that the procuring entity receives the notice of temporary suspension of selection process until the competent agency issues the complaint resolution letter;

e) The competent agency issues complaint resolution letter on investor selection result within 10 days from the receiving date of the written response from the complaint resolution advisory board.

3. In case the investors send written complaint directly to the competent agency without compliance with the resolution procedures specified in this Article, such complaint shall not be reviewed and handled.

#### **Article 97. Dispute resolution**

1. Dispute between competent agency, contract signing agency and investor or PPP project enterprise and any dispute between PPP project enterprise and other economic entity participating in project implementation shall be resolved by negotiation, mediation, Arbitration or Court.

2. Dispute between competent agency, contract signing agency and domestic investor or PPP project enterprise established by domestic investor; dispute between domestic investors; dispute between domestic investor or PPP project enterprise established by a domestic investor and Vietnamese economic entity shall be resolved by Vietnamese Arbitration or Vietnamese Court.

3. Dispute between competent agency, contract signing agency and foreign investor or PPP project enterprise established by foreign investor shall be resolved by Vietnamese Arbitration or Vietnamese Court, except otherwise agreed in the contract or stipulated in the international treaty that the Socialist Republic of Vietnam is a member.

4. Dispute between investors where at least one foreign investor involves; dispute between investor or PPP project enterprise and foreign individual or organization shall be resolved by one of the following agencies, organizations:

- a) An arbitration of Vietnam;
- b) A court of Vietnam;
- c) A foreign arbitration;
- d) An international arbitration;
- dd) An arbitration established upon agreement by the disputed parties.

5. Disputes resolved by Arbitration defined in the signed PPP project contract and relevant contracts are commercial disputes. The decisions of the foreign arbitrators shall be recognized and enforced in accordance with the law on the recognition and enforcement of foreign arbitrator decisions in Vietnam.

#### **Article 98. Handling of violations in PPP investments**

1. Prohibit of PPP investment is applied to organizations and individuals that commit violations stipulated in Article 10 of this Law.

2. Cancel procurement process, suspend the procurement process, reject investor selection result or nullify decision of procuring entity, the competent agency, the contract signing agency when violations of regulations of this Law and other relevant legislations are detected.

3. Terminate contracts, suspend the implementation of contracts when breach of contract or violations of regulations of this Law and other relevant legislations are detected.

4. In addition to the handling of violations stipulated in clauses 1, 2 and 3 of this Article, organizations and individuals that commit acts of violating the law and regulations on PPP investment, depending on the nature and level of their violations, shall be disciplined, administratively sanctioned or criminal prosecuted according to the provisions of law.

5. The Government shall provide guidance on this Article.

### **Chapter XI**

#### **IMPLEMENTING PROVISIONS**

#### **Article 99. Amendments and supplements to other relevant Laws**

1. To amend, supplement several articles of the Procurement Law No. 43/2013/QH13 that has been amended and supplemented according to the Law No. 03/2016/QH14, Law No. 04/2017/QH14 and Law No. 40/2019/QH14 as follows:

a) To amend, supplement clause 3, Article 1 as follows:

“3. Select the investor to implement land – used investment projects”

b) Amend, supplement clause 2, Article 3 as follows:

“In case of selection of bidding to supply raw materials, fuels, materials, supplies, consulting services and non-advisory services to ensure continuity of production, business and procurement activities in order to maintain the regular operation of state-owned enterprises, enterprises must promulgate regulations on contractor selection to uniformly apply in enterprises on the basis of ensuring fair objectives, transparency and economic efficiency”.

c) To amend, supplement Clause 10 Article 4 as follows:

“10. *Project enterprise* means an enterprise established by an investor to execute an investment project that uses land”.

d) To amend, supplement Clause 12 Article 4 as follows:

“12. *Bidding* is the process of selecting contractors to sign and perform contracts on the provision of consultancy services, non-advisory services, goods procurement and construction and installation; select investors to sign and execute contracts of investment projects using land on the basis of ensuring competition, fairness, transparency and economic efficiency”.

dd) To amend, supplement clause 4, Article 6 as follows:

“4. Investors participating in bidding must be legally independent and financially independent from the following parties:

a) Bidding consultancy contractors for investment projects that use land until the date of signing project contracts;

b) Competent agencies, procuring entities.”

e) To amend, supplement point i, Clause 1, Article 8 as follows

“i) List of land – used investment projects”.

g) To amend, supplement Clause 2, Article 15 as follows:

“Land – used investment projects, except for restriction cases of investment in accordance with the investment law”.

h) To reject Article 68.

2. To amend, supplement Clause 4 Article 40 of the Law on Public Investment No. 39/2019/QH14 as follows:

“4. Principles, competence, contents and process of procedures for formulation, appraisal and decision of project feasibility studies of PPP investment comply with the law on PPP investment”.

3. To amend, supplement Clause 2 Article 20 of Law on Prices No.1/2012/QH13 as follows:

“2. Promptly adjust prices when price constituents change, particularly prices of public goods, services in PPP investment projects are adjusted by each period specified in the PPP project contract”.

4. To reject Point c, Clause 4 and Clause 5, Article 30 and Clause 4, Article 51 of the Law on Management and Use of Public Assets No.15/2017/QH14.

5. To amend, supplement several articles of Law Provision of Assistance for Small and Medium-Sized Enterprises No. 04/2017/QH14 as follows:

a) To amend, supplement Clause 2 Article 12 as follows:

“2. Ministries, ministerial-level agencies and provincial-level People’s Committees shall establish incubators, technical facilities and co-working spaces. Enterprises and other investment and business organizations may establish incubators, technical facilities and co-working spaces”.

b) To amend, supplement Clause 1 Article 13 as follows:



“1. Ministries, ministerial-level agencies and provincial-level People’s Committees shall establish product distribution chains. Enterprises and other investment and business organizations may allow to establish product distribution chains”.

5. To amend, supplement Clause 2 Article 39 of Law Hydrometeorology No. 90/2015/QH13 as follows:

“Public organizations on hydro-meteorology provide hydro-meteorological services according to their functions and tasks prescribed by competent agencies in accordance with the provisions of this Law and relevant laws; are entitled to exploit hydro-meteorological products and services of other organizations and individuals on the basis of orders or agreements as prescribed by law.

Other organizations and individuals provide hydro-meteorological services in accordance with this Law and relevant laws”.

6. To amend, supplement several articles of Law on Housing No. 65/2014/QH13 as follow:

a) To amend, supplement Clause 3 Article 36 as follows:

“The State directly constructs houses by government budget, government bonds, Official Development Assistance, concessional loans from sponsors, credit capital of the State covers an area determined to build houses for resettlement according to the approved plannings for lease, lease-purchase or sale for resettled people”.

b) To amend Clause 1 Article 53 as follows:

“The State constructs social housing by government budget, government bonds, Official Development Assistance, concessional loans from sponsors, credit capital of the State covers an area determined to build houses for resettlement according to the approved plannings for lease, lease-purchase or sale for resettled people”.

c) To reject point b, Clause 3 and Clause 40, Point b, Clause 1, Article 114.

7. To reject point c Clause 4 and Clause 5 Article 30, Clause 4 Article 51 of Law on management and use the public property No.15/2017/QH14.

#### **Article 100. Effectiveness**

1. This Law takes effect as of 01 January, 2021, except the provisions of clause 6, Article 101 of this Law.

2. The Government, State administration agencies shall provide detailed regulations on the Articles, clauses as assigned in this Law.

#### **Article 101. Transitional provisions**

1. The project of the sectors stipulated in clause 1 Article 4 of this Law and of the scale of total investment stipulated in clause 2 Article 4 of this Law shall be implemented as follows:

a) In case the investment has been approved in principle by competent authority before the effective date of this Law, the successive steps shall be implemented in accordance to this Law. In case the in-principle investment approval needs adjustment, such adjustment shall be implemented according to Article 18 of this Law;

b) In case the feasibility study has been approved by the competent authority before the effective date of this Law, the successive steps shall be implemented in accordance with this Law without conducting the process of project approval stipulated in this Law; for the case that non of the steps of investor selection has been carried out, there needs approval of additional contents as stipulated in clause 6, Article 23 of this Law;

c) For project in the cases specified in points a and b of this Clause, if the percentage of state capital in PPP project is higher than the percentage specified in clause 2, Article 69 of this Law, no adjustment to the approved percentage shall be required.

2. The project that is not in the sectors specified in clause 1 Article 4 of this Law, not of the scale of total investment specified in clause 2 Article 4 of this Law but until the effective date of this Law, or to which the prequalification result has not been approved or bidding document/requirement document (for project not applying prequalification) has not been issued, shall be stopped.

3. The PPP project that is in the process of investor selection shall be implemented as follows:

a) In case the prequalification result of the investor has been approved before the effective date of this Law, the project shall continue its implementation in accordance with this Law.

b) In case the bidding document/requirement document has been issued before the effective date of this Law but the deadline for bid submission is after December 31, 2020, the procuring entity shall be responsible for extending the deadline for bid submission to modify the bidding document, requirement document in accordance with this Law without leading to any adjustment to in-principle investment approval or adjustment to feasibility study approval;

c) In case of the project that reached approval of investor selection result, but contract negotiation and contract signing be carried out after the effective date of this Law, the contract signing agency shall be responsible for organizing the contract negotiation, contract signing based on the results of investor selection, bid, proposal, bidding document, requirement document in accordance to this Law without leading to any adjustment to in-principle investment approval, adjustment to approved feasibility study.

4. Project contract signed before the effective date of this Law shall continue its implementation according to terms and conditions of the project contract.

5. From the effective date of this Law, the transition for project of Build-Transfer (BT) contract type shall be as follows:

a) For the project has not issued bidding document, requirement document, stop the process; for the bidding document, requirement document has been issued, continue the process based on the issued bidding document, requirement document and applicable laws and regulations at the time of issuing bidding document, requirement document;

b) For the project that reaches approval of investor selection result before the effective date of this Law, the contract signing agency shall organize the contract negotiation and contract signing based on the investor selection result, bids, proposals, bidding document, requirement document and applicable laws and regulations at the time of issuing bidding document, requirement document;

c) For the project to which project contract has been signed before the effective date of this Law, the project shall continue to be implemented and paid in accordance with the signed BT contract and applicable laws and regulations at the time of signing the contract;

d) Stop the implementation of new project applying BT contract.

6. Project applying BT contract that has not been approved in principle the investment shall stop its implementation from the date of 15 August, 2020.

7. The Government shall provide guidance on this Article.

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This Law has been passed by the National Assembly XIV, 9th session on the date of June 18, 2020./.

**CHAIRPERSON OF THE NATIONAL ASSEMBLY**

**Nguyen Thi Kim Ngan**